



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0114]

RIN 1625-AA87

**Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

---

**SUMMARY:** The Coast Guard is proposing to amend the established security zone extending 50 yards into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the Coast Guard Island Pier. The proposed security zone change would include the entire perimeter of Coast Guard Island and 50 yards on either side of the Coast Guard Island causeway (Dennison Street Bridge). This action is necessary to provide for the continued security of the military service members on board vessels moored at the pier, as well as all military members and government property on Coast Guard Island. This security zone would prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Oakland Estuary surrounding Coast Guard Island, and prohibit all persons and vessels from loitering within 50 yards of the Coast Guard Island causeway, unless authorized by the Captain of the Port (COTP) or his designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2023-0114 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the **SUPPLEMENTARY**

**INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT William Harris, Sector San Francisco Waterways Management Division, U.S. Coast Guard; telephone 415-399-7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The Captain of the Port (COTP) San Francisco has identified a need to amend the existing security zone to address the security concerns to the military base on Coast Guard Island and the Coast Guard Island causeway. Over the past three years, Coast Guard Island has had over 20 security incidents. Additionally, the Coast Guard no longer uses the Security barrier around the pier and this proposed rulemaking will account for that change.

The purpose of this rulemaking is to ensure the security of Coast Guard facilities, personnel, and vessels, at all times within the navigable waters of the Oakland Estuary surrounding Coast Guard Island and the Coast Guard Island causeway. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70051 and 70124.

### **III. Discussion of Proposed Rule**

The Coast Guard is proposing to amend the currently established security zone at Coast Guard Island, 33 CFR 165.1190, to cover all navigable waters of the Oakland Estuary beginning at 37°46'42.5" N, 122°14'51.4" W; thence to 37°46'46.6" N, 122°14'59.7" W; thence to 37°46'51.8" N, 122°15'7.4" W; thence to 37°46'56.3" N, 122°15'12.1" W; thence to 37°47'2.2" N, 122°15'16.4" W; thence to 37°47'8" N, 122°15'16.6" W; thence to 37°47'10" N, 122°15'12.8"

W; thence to 37°47'10.1" N, 122°15'5.7" W; thence to 37°47'7.8" N, 122°15'0.1" W; thence to 37°47'5.2" N, 122°14'53.7" W; thence to 37°47'2.1" N, 122°14'49.5" W; thence to 37°46'58.9" N, 122°14'46.2" W; thence to 37°46'57.1" N, 122°14'44.6" W; thence to 37°46'52.9" N, 122°14'42.6" W; thence to 37°46'50.2" N, 122°14'42.9" W; thence to 37°46'47.9" N, 122°14'43.6" W; thence to 37°46'42.3" N, 122°14'44.1" W; thence to the beginning, and all navigable waters of the Oakland Estuary 50 yards on either side of a line beginning at 37°46'48.1" N, 122°14'45.8" W; thence to 37°46'46.1" N, 122°14'41.5" W; thence to 37°46'45.4" N, 122°14'36.6" W.

The purpose of the proposed change to the security zone is to adapt to the current security needs of the military facilities on Coast Guard Island, and to provide the level of security and protection for national interest with all U.S. Coast Guard personnel, facilities, vessels located on and within the waters surrounding Coast Guard Island. Additionally, the proposed change would also include the Coast Guard Island causeway, a bridge, that facilitates pedestrian and vehicle access to Coast Guard Island, and therefore is considered critical infrastructure. Recent increases to the illegal anchoring of vessels in the vicinity of the bridge represent a serious risk for U.S. Coast Guard members and physical security of Coast Guard Island.

No vessel or person would be permitted to enter the security zone surrounding Coast Guard Island, and no vessel or person would be permitted to loiter in the zone surrounding the causeway bridge, unless authorized by the COTP. Vessel operators and persons would be able to transit the waters surrounding the causeway bridge without COTP permission, but they would not be allowed to loiter in those waters without the COTP permission. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The effect of this rule will not be significant because vessel traffic will still be permitted to transit around Coast Guard Island, and this rule will encompass only a small portion of the waterway.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of

1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a security zone covering all navigable waters of the Oakland Estuary, which would exclude vessels from entering the regulated area unless authorized by the COTP. Normally such actions are categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking and will consider all

comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0114 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

## **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Revise § 165.1190 to read as follows:

### **§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.**

(a) *Locations.* The following areas are security zones: (1) Coast Guard Island. All waters of the Oakland Estuary, from surface to bottom, encompassed by a line connecting the following points beginning at 37°46'42.5" N, 122°14'51.4" W; thence to 37°46'46.6" N, 122°14'59.7" W; thence to 37°46'51.8" N, 122°15'7.4" W; thence to 37°46'56.3" N, 122°15'12.1" W; thence to 37°47'2.2" N, 122°15'16.4" W; thence to 37°47'8" N, 122°15'16.6" W; thence to 37°47'10" N, 122°15'12.8" W; thence to 37°47'10.1" N, 122°15'5.7" W; thence to 37°47'7.8" N, 122°15'0.1" W; thence to 37°47'5.2" N, 122°14'53.7" W; thence to 37°47'2.1" N, 122°14'49.5" W; thence to 37°46'58.9" N, 122°14'46.2" W; thence to 37°46'57.1" N, 122°14'44.6" W; thence to 37°46'52.9" N, 122°14'42.6" W; thence to 37°46'50.2" N, 122°14'42.9" W; thence to 37°46'47.9" N, 122°14'43.6" W; thence to 37°46'42.3" N, 122°14'44.1" W; and back to the beginning point. These coordinates are based on North American Datum (NAD) 83.

(2) Coast Guard Island Causeway. All waters of the Oakland Estuary, from surface to bottom, 50 yards on either side of a line beginning at 37°46'48.1" N, 122°14'45.8" W; thence to 37°46'46.1" N, 122°14'41.5" W; thence to 37°46'45.4" N, 122°14'36.6" W. These coordinates are based on North American Datum (NAD) 83.

(b) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a)(1) of this section unless



authorized by the COTP. The security zone described in paragraph (a)(1) of this section is closed to all vessel traffic, except as may be permitted by the COTP. To seek permission to enter the security zone in paragraph (a)(1) of this section, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399-3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP.

(2) Under the general security zone regulations in subpart D of this part, you may not loiter in the security zone described in paragraph (a)(2) of this section unless authorized by the COTP.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: February 10, 2023.

Taylor Q. Lam  
Captain, U.S. Coast Guard,  
Captain of the Port San Francisco  
[FR Doc. 2023-03296 Filed: 2/15/2023 8:45 am; Publication Date: 2/16/2023]